# Petition

81-1481

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NO. _____

SUPREME COURT OF THE UNITED STATES

October Term, 1981

WILLIAM LAMB.....Petitioner,

V.

EQUIFAX SERVICES, INC.,...Respondent,

ON WRIT OF CERTIORARI FROM
KENTUCKY COURT OF APPEALS

# PETITION FOR WRIT OF CERTIORARI

KELLY THOMPSON, JR.
THOMPSON & ASSOCIATES P.S.C.
Post Office Box 1927
1046 State Street
Bowling Green, KY 42101

## QUESTION PRESENTED

1. THE KENTUCKY COURT OF APPEALS, THE COURT OF LAST RESORT, HAS DECIDED NUMEROUS FEDERAL QUESTIONS IN CONFLICT WITH DECISIONS OF VARIOUS FEDERAL COURT OF APPEALS. IN DOING SO THE KENTUCKY COURT OF APPEALS HAS CITED SUBSTANTIVE STATE COURT DECISIONS AND IGNORED FEDERAL COURT OF APPEALS DECISIONS INTERPRETING THE FAIR CREDIT REPORTING ACT 15 U.S. CODE 1681 ET SEQ.

## PARTIES

All parties to the proceeding in in the Kentucky Court of Appeals whose judgment is sought to be reviewed are:

Appellant in the Kentucky
Court of Appeals
Equifax Services, Inc.
Counsel: James David Bryant
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Bowling Green, Kentucky
42101
(502) 842-5611

Appellee in the Kentucky
Court of Appeals
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## OPINIONS BELOW

The official report of the Opinion delivered by the Court sought to be reviewed is: Equifax Services, Inc. v. William Lamb, Ky. App. 621, S.W. 2d, 28.

## JURISDICTION

The date of the judgment or decree sought to be reviewed is the Opinion of the Kentucky Court of Appeals, Equifax Services, Inc. v. William Lamb, rendered May 8, 1981. The order denying Petition for Rehearing was entered June 12, 1981, the order denying Motion for Discretionary Review before the Supreme Court of Kentucky was entered October 6, 1981.

Statutory provision believed to confer jurisdiction on this court for review of the decree in question by Writ of Certiorari is 15 U.S. Code, Section 1681, commonly known as the Fair Credit Reporting Act. Relevant provisions of the Statute are located at Appendix, pages fifty-one through fifty-three.

## STATEMENT OF THE CASE

William Lamb, a professional truck driver, had a perfect insurance record, having always paid his premiums, never received a citation, and never being involved in an automobile accident. (Transcript of Record, (TR) p. 42, q. 33). After moving from Indiana to Kentucky, William Lamb was notified that his insurance had been cancelled because of a report furnished to his insurance company by the Respondent,

Equifax Services, Inc. (TR, p. 33, q. 10). After numerous telephone calls to various offices of Equifax Services, Inc., Mrs. William Lamb called the Cincinnati office where she was read a report that her husband drank alcohol to excess, was not a truck driver, and ran around on his previous wife in 1964. (TR, p. 14, q. 20).

William Lamb, in an attempt to ascertain the truth concerning the report made upon him; made the following telephone calls; (Plaintiff's Exhibit Four).

June 23

June 23

June 23

June 27

June 29

June 29

July 5

July 5

July 12

July 12

July 12

July 12

July 21

July 22

July 22

Louisville

Louisville

From Granite City, IL

Louisville

Louisville

Louisville

Louisville

Louisville

Louisville

Cincinnati

Louisville

Louisville

Louisville

Louisville

Louisville

1 minute

15 minutes

13 minutes

8 minutes

18 minutes

18 minutes

10 minutes

6 minutes

16 minutes

10 minutes

3 minutes

10 minutes

20 minutes

16 minutes

17 minutes

Even with this persistance, the reports continued to state that Mr. Lamb was not a truck driver and Mr. Lamb's automobile insurance was cancelled. The Lambs then approached counsel who requested a copy of the reports which caused the cancellation. (TR, p. 32, q. 6). Equifax Services responded that as long as William Lamb contested the accuracy of the reports, that no written report would be furnished to the Lambs or their counsel. (Letter by Equifax's counsel, TR, p. 96). Soon thereafter, this action was filed pursuant to 15 U.S. Code, Section 1681 in the Circuit Court of Warren County, Kentucky.

A motion was made for production of the reports and Equifax furnished reports dated May 20, 1977, May 23, 1977, June 2, 1977, July 7, 1977, and July 28, 1977. (Defendant's Response to Request

for Production of Documents. Plaintiff's Request dated Sept. 10, 1977. Allegedly these were the reports furnished to the insurer of William Lamb, Kentucky State Farm Insurance. However, at the trial of this action, it was determined that all reports except for the report of May 23, 1977 had been furnished to an insurer for the fleet of semi-tractor trailer trucks, Marketing Insurance Company, which insured William Lamb on his fleet truck policy and therefore, Equifax had only furnished one of the reports which had caused the cancellation of William Lamb's insurance.

William Lamb's wife testified that her husband suffered embarrassment, mental distress, and that her husband

had had a change of behavior since the cancellation, that he was short with his children, impatient, and high strung. (TR, p. 11, q. 8). She testified that he had never had a traffic ticket nor an automobile accident. (TR, p. 22, q. 44). She and her husband were forced to drive a semi-tractor trailer to go to work and to go shopping because this truck was insured under the fleet policy. She testified that her husband seldom drank alcohol. She testified that the first cancellation was for car insurance and after that the liability policy on the farm was cancelled and an attempt was made to cancell their home owners policy and after that one policy was cancelled after another. (TR, p. 22

q. 23). She testified that the report which was read to her on the telephone had never been furnished to the Lambs, (TR, p. 14, q. 19, p. 23, q. 6, p. 30, q. 1).

William Lamb testified that he was a professional truck driver, had a clean driving record, had never had trouble with insurance, and had formerally been a police officer, and had never had an automobile accident. (TR, q. 3, 4, 5). He testified that before the report by Equifax Services, his insurance for collisiion and liability cost One Hundred Seventy-Six Dollars ($176.00) per year, (TR, p. 51, q. 68) and

that approximately six months after the cancellation of his insurance he was able to obtain liability insurance in a high-risk pool for Four Hundred Forty Dollars ($440.00) per year. (TR, p. 56, q. 83, 84).

Dwight Eugene Colefield testified that he was the investigator for Equifax Services who prepared the report, that his training consisted of a week and a half in a branch office and two weeks of working with another investigator. (TR, p. 137, q. 3). He testified that his entire investigation of William Lamb took less than one hour, that he talked to approximately four or five people, and that no one informed him that William Lamb did not

drive a semi-tractor trailer--a statement that he placed in the report. He testified that Betty Lamb, Jim Lamb, and Perry Cummings told him that William Lamb ran around on his wife in 1964; however, he could offer no explanation when he was aprized of the fact that William Lamb did not know these people in 1964. (TR, p. 147, q. 81). He testified he prepared seven to fourteen investigative reports per day. (TR, p. 166, q. 18).

Most of the witnesses for Equifax Services, Inc. were long-time employees of the company. Sewell Sundee, an employee for 32 years, testified that it was company policy that if an initial report was disputed, a copy would not

be furnished to the consumer. (TR, p. 247, q. 81). He testified that even though there was an office in Bowling Green, Kentucky, the residence of William Lamb, that the Lambs were forced to make numerous long-distance telephone calls to Cincinnati and Louisville for their disclosure. (TR, p. 260, q. 20).

At the conclusion of the trial, a jury returned a verdict of Twenty-Five Thousand and Forty-Five Dollars and 15/100 ($25,045.15) compensatory damages, and Fifty Thousand Dollars ($50,000.00) in punitive damages for violations of the Fair Credit Reporting Act.

Equifax Services appealed to the Kentucky Court of Appeals. A three-judge panel of the Intermediate Kentucky Appellate Court, formed by

judicial amendment in 1976, reversed the jury decision citing substantive state case law, ruling that there was no evidence of record of the failure to disclose by Equifax Services, Inc. and further that there were no damages to William Lamb.

The Court ruled at page 7 of their Opinion that if there were reports that Mr. Lamb was an alcoholic and it was not furnished in subsequent discovery procedures, that Equifax Services met its burden to disclose by disclosing this report to Mrs. Lamb over the telephone, and therefore even if it was subsequently destroyed by Equifax that Equifax had complied with the requirements of the Fair Credit Reporting Act. The verdict was reversed leading to orders to dismiss and for

William Lamb to pay the extensive court costs of this action.

One judge of the three-judge panel, Judge Wintersheimer, concurred by separate opinion stating:

> "...the system of not furnishing written reports upon request of an applicant until a release is executed is highly questionable."

## FEDERAL QUESTION

Federal Questions sought to be reviewed were raised in the Complaint filed by William Lamb in the Warren Circuit Court of Kentucky alleging violations of the Fair Credit Reporting Act on behalf of Equifax Services, Inc.

Specific arguments raising the various subsections of the Fair Credit Reporting Act 15 U.S. Code 1681 were passed upon by the trial court and the Court of Appeals. (See Appendix herein).

## ARGUMENT

The Kentucky Court of Appeals in ruling that William Lamb did not meet the burden of proof under the Fair Credit Reporting Act has cited Hoskins v. Hoskins, KY 316, S.W. 2d, (1958), a substantive Kentucky State decision. Hoskins involved a predestrian who was struck by a truck. In Hoskins, the court ruled that to authorize submission of a case to jury, there must be some evidence of probative value to show that defendant was negligent and the defendant's negligence was a proximate cause of the injury.

The Fair Credit Reporting Act authorizes state court proceedings. However, federal courts have ruled that substantive state law cannot apply to this federal statute.

Thornton v. Equifax, Inc., 619 F. 2d, 700 (1980) at page 706:

> "We also agree with the Wyoming District Court's opinion that the remedies provided by the act are of a federal statutory nature and thus defendant's contention that any rights to relief in the form of damages are to be determined by state court decisions is illtaken. Ackerly v. Credit Bureau of Sheraton, Inc., 385, F. Supp. 658, 661, D.Wyo. (1974)."

In citing Hoskins v. Hoskins, the Kentucky Court of Appeals in its Opinion has completely ignored the reasonable procedures standard contained within the Federal Fair Credit Reporting Act. Nitti v. Credit Bureau of Rochester, Inc., 375, N.Y.S. 2d, 817 and Bryant v. TRW, Inc. 487 F. Supp. 1234 (1980) at page 1235.

The Kentucky Court of Appeals has applied inappropriate standards for damages in this action. In Millstone v. O'Hanlon, 528 F. 2d 829, (1976),

at page 834, it is stated that the defendant did not have proper procedures to insure accuracy when the agent spent 30 minutes preparing the report and there were mis-statements in the report.

The Kentucky Court of Appeals has upsurped the jury's function as finders of fact and substituted its opinion for the jury's verdict. In Bryant v. TRW, Inc., 437 F. Supp. 1234 (1980), the Defendant argued that as long as the Defendant accurately reported the information it was free from liability and the Court erred in allowing the jury to consider allegations of a willful violation and future damages. The Court stated that the motion was denied:

> "To accept Defendant's position would diminish the jury's role in accessing the performance of Consumer Reporting Agencies under the act contrary to Congressional intent."

The Court of Appeals has ignored 15 U.S. Code Section 1681-C which prohibits any adverse item of information which antedates the report by more than seven years. The report states that William Lamb ran around on his wife during his first divorce, thirteen years prior to the report.

The Court ignored 15 U.S. Code 1681-G which requires consumer reporting agencies to maintain reasonable procedures to disclose the recipients of any report furnished for any purpose within a six-month period preceding the request. The evidence in this action demonstrates that William Lamb did not know that this report was furnished to another insurance company until the trial of this action and that there was no

reasonable procedures instituted by Equifax Services, Inc. to maintain compliance with this section.

The Kentucky Court of Appeals has ignored 15 U.S. Code, Section 1681-G, Subsection (a) (2) which provides that appropriate discovery procedures in the court on which this action is brought are available to the plaintiff to secure discovery. To this date, no Indiana reports furnished to Kentucky Farm Bureau have been furnished to William Lamb, even upon discovery in this action. The record is uncontradicted that a report of June 3, 1977 remains missing. Further, the court ruled that Equifax Services sufficiently disclosed a report that William Lamb drank alcohol to excess when disclosing this report orally over

the telephone to Mrs. William Lamb, even though Equifax Services did not furnish this report in writing to William Lamb upon discovery in this proceeding. The opinion sought to be reviewed states:

> "Assuming there was another report, it was still no violation of 15 U.S. Code, Section 1681-G because the report was disclosed over the telephone."

## CONCLUSION

Congress specifically authorized the filing of actions under the Fair Credit Reporting Act in state courts, presumably in an effort to relieve the over-crowded, back-logged dockets within the Federal Court system. If a plaintiff in a state court proceeding is not guaranteed the interpretations of this federal statute offered by numerous Federal courts, then in that event, it

would be foolish to utilize the concurrent jurisdiction of the state court proceeding.

This Petition for Writ of Certiorari is the only remedy for federal review of this decision of an Intermediate Kentucky Appellant Court which conflicts with numerous federal interpretations of the Fair Credit Reporting Act.

William Lamb respectfully prays that the Court grant his Petition on Writ of Certiorari.

This the 5th day of February, 1982.

RESPECTFULLY SUBMITTED:

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# Appendix

CIVIL ACTION NO. 20874 WARREN CIRCUIT
DIVISION NO. I

WILLIAM LAMB PLAINTIFF

VS. JUDGMENT

EQUIFAX SERVICES, INC. DEFENDANT

This matter having come on for trial before the Court with the jury on the 16th day of July, 1979, at the hour of 9:30 a.m.; the plaintiff being represented in person and by counsel, and the defendant being represented by local counsel and by counsel from Atlanta, Georga, both parties having announced ready for trial, the following jury was empanelled and then duly sworn according to law:

Carson Lockhart
Maxine Neel
Betty Davenport
Bennie Beach
John Deeb
Elizabeth McGown
Scott Blann
Henry Frierson

Jane Shreve
Thomas Starr
Herman Hunton
Elizabeth Milliken

Counsel for the parties having made their opening statements, the plaintiff began the presentation of his evidence in chief. He called as his first witness the plaintiff's wife, Portia Lamb, and she testified on both direct and cross-examination. The plaintiff was then called to testify in his own behalf, and the defendant objected on the basis of KRS 421.20 (3). The court overruled this objection and permitted the plaintiff to testify. At 4:15 on the afternoon of Monday, July 16, 1979, the Court announced that there would not be sufficient time to conclude the trial of the case on that date, and the jury was permitted to separate after proper

admonition by the Court with instructions to return to Court on Tuesday, July 17, 1979, at 9:30 a.m. The court instructed counsel for the parties to appear in Chambers at 8:30 a.m. on Tuesday, July 17, 1979, so that those depositions taken in the case might be reviewed and the objections appearing therein might be ruled upon.

On the morning of Tuesday, July 17, 1979, at the hour of 8:30 a.m., counsel for the parties appeared in Chambers and the Court issued its rulings regarding the objections made during and after the depositions taken in the case, and the Court proceeded to edit the depositions, striking therefrom those portions which the Court ruled were inadmissible because of a lack of competency, relevancy or materiality.

This Hearing was not on the Record,- thus, the Record does not contain any objections to the Court's rulings made by either party at the Hearing.

At the hour of 9:30 a.m. on that same date, the above parties, their attorneys, and the jury duly selected and sworn, all appeared in Court and the trial resumed. The Plaintiff completed the presentation of his evidence in chief, the Defendant moved the Court for a Directed Verdict. The Court overruled the Defendant's motion for a Directed Verdict, and the Defendant then began its evidence in chief. At 3:00 p.m. on the afternoon of Tuesday, July 17, 1979, the Defendant completed its evidence in chief, after which time the Plaintiff presented rebuttal testimony. At 4:00 p.m. on the afternoon of Tuesday, July 17, 1979, the court announced

that there would not be sufficient time to conclude the trial of the case on that date, that further arguments of counsel would not be necessary, and the jury was permitted to separate after proper admonition by the Court, with instructions to return to Court at 9:30 a.m. on Wednesday, July 18, 1979.

At 8:30 a.m. on the morning of Wednesday, July 18, 1979, counsel for all parties appeared in chambers and the defendant again moved for a directed verdict. The court overruled the defendant's motion for Directed Verdict and thereafter began consideration of the proposed Instructions tendered by the parties. At 9:45 a.m. on that same date, the above parties, their attorneys, and the jury duly selected and sworn, all appeared in Court, and the trial resumed.

The plaintiff was allowed to present the testimony of defendant's employee, Charles Sipes, and the evidence was concluded on behalf of both parties. The Court then instructed the jury, and counsel for both parties made their closing arguments. The jury retired at 11:15 a.m., and the defendant moved the Court for an admonition to the jury to disregard certain remarks made by the Plaintiff's counsel in his sumation. This motion was overruled.

The jury returned its verdict at 12:30 p.m. on July 18, 1979, and the foreman of the jury read the following verdict into open court at that time:

VERDICT

"We, the jury, find for the Plaintiff under Instruction Number 2."

/s/Bennie P.Beach, Jr.
FOREMAN

Compensatory: $25,045.15

Punitive: $50,000.00

/e/

Bennie Beach
John G. Deeb
Henry Frierson
Herman Hinton
Elizabeth Milliken
Carson Lockhart
Scott Blann
Elizabeth McGown
Betty Davenport
Maxine Neel

/e/

Bennie Beach
John C. Deeb
Henry Frierson
Herman Hinton
Elizabeth Hinton
Carson Lockhart
Scott Blann
Elizabeth McGown
Betty Davenport
Maxine Neel

The Defendant was asked if there were any objections to the verdict, and the defendant announced they would be raised

at a future time, if any. The jury was then dismissed, and the Court was adjourned.

This 15th day of August, 1979.

WILLIAM E. ALLENDER
WARREN CIRCUIT COURT
DIVISION NO. I
JUDGE

TENDERED BY:

KELLY THOMPSON, JR.
Attorney for Plaintiff

HAVE SEEN:

DOUGLAS J. LAPIDUS
Attorney for Defendant

JAMES DAVID BRYANT
Attorney for Defendant

OPINION RENDERED: May 8, 1981; 10:00 a.m.
TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 80-CA-2105-MR

EQUIFAX SERVICES, INC. APPELLANT

VS. APPEAL FROM
WARREN CIRCUIT COURT
HONORABLE WILLIAM E. ALLENDER
JUDGE
CIVIL ACTION NO. 20874

WILLIAM LAMB APPELLEE

BEFORE: HAYES, Chief Judge, LESTER and WINTERSHEIMER, Judges.

HAYES, CHIEF JUDGE. Equifax Services, Inc. appeals from a judgment of the Warren Circuit Court which awarded William Lamb $25,045.15 for compensatory damages and $50,000.00 for punitive damages.

Lamb brought the action for common law defamation and for violation of the Fair Credit Reporting Act, 15 U.S.C.

Section 1681, et seq. A jury trial resulted in a verdict for Lamb. Equifax who had previously made directed verdict motions, moved for a judgment notwithstanding the new trial motin, limiting it to damages. At the second trial, the trial court determined that the issue of damages could not fairly be litigated apart from liability. The trial court believing it erred in granting the new trial, set aside its order granting a new trial and entered a judgment on the original verdict.

On appeal Equifax alleges that the trial court erred in refusing to grant its original motion for judgment notwithstanding verdict and alternatively that the trial court erred in setting aside its new trial order and reinstating the original verdict and entering a

judgment thereon.

Lamb resided in Indiana until 1977, when, along with his wife, Portia, he moved to Bowling Green, Kentucky. He applied for automobile liability insurance with the Kentucky Farm Bureau Insurance Company. In a letter dated June 22, 1977, the Farm Bureau informed Lamb that it was cancelling his insurance. The letter stated:

> This action was influenced by information in a consumer report, made at our request by Equifax Inc., 1135 S. 4th Street, Louisville, Kentucky, a reputable source of information for business decisions.

The Lambs set about contacting Equifax to find out what information had been reported to cause their insurance to be cancelled.

Lamb telephoned the Louisville office of Equifax. Curtis Mellott, an assistant branch manager, testified that on June 23, he disclosed to Lamb the

contents of the Bowling Green report of May 23rd. Mellot sent a copy of that report, the only one his office had at the time, to Bowling Green for the Lambs to pick up. Betty Donohue of the Cincinnati office spoke with Mrs. Lamb on June 27th at which time she read Mrs. Lamb a former address report of June 2nd, which Donohue forwarded to Louisville. Donohue stated that Mrs. Lamb made no comments about drinking and that there was no mention of Lamb's drinking in the report.

Mellot testified that after the Louisville office received the former address report, he disclosed the contents of the report to Lamb over the telephone. According to Mellot, the conversation took place after June 23rd and before July 7th.

Lamb took exception to two items on the report: (1) the reaosn for his first divorce; and (2) information concerning an arrest report. Equifax personnel testified that Lamb was not allowed to have a copy of the report because he disputed the information. Equifax ordered a reinvestigation which resulted in a July 7th report. The July 7th report deleted the first item and again listed the second because it had been verified with police records.

Barbara Maines, formerly of Equifax, stated that on July 12th, she read Lamb the reinvestigation report to which Lamb took no exception. Lamb requested a copy of the report which Maines forwarded to Kentucky. Marilee Ringley of the Bowling Green office, testified that Portia Lamb signed for the

May 23rd report on June 27th, and that Lamb signed for the July 7th report on July 22nd. At that time Lamb indicated inaccuracies in the July 7th reinvestigation report. Because of Lamb's disputing the July 7th report, additional reinvestigation was conducted which resulted in a July 28th report which was substantially the same as July 7th.

Portia Lamb testified that she contacted Equifax's Cincinnati office after receiving the cancellation notice from Farm Bureau. Mrs. Lamb said that the report disclosed to her stated that Lamb drank to excess and ran around on his first wife in 1964. Mrs. Lamb insisted that the reports she saw were not the one which was read to her over the phone. Lamb testified that no one would tell him anything concerning his insurance cancellation.

The Equifax employees who spoke with the Lambs testified that they did not inform Lamb or did not remember if they told the Lambs that a copy of the reports went to Marketing Specialists of National Indemnity Company, referred to as Marketing Insurance. These employees also stated that Lamb did not request the names of other recipients of the reports. However, the July 7th report of which Lamb received a copy listed under agency the name Marketing Insurance.

The only section of the Fair Credit Reporting Act of which a violation was instructed upon is 15 U.S.C., section 1681g which is set out in part here:

> Disclosures to consumers.--(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:
>
> (1) The nature and substance of all information (except medical information) in its files on the consumer at the time of

the request.

....

(2) The recipients of any consumer report on the consumer which it has furnished--

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

15 U.S.C. Section 1681h concerns the conditions of disclosure to consumers.

Conditions of disclosure to consumers.--(a) A consumer reporting agency shall make the disclosures required under section 609 (section 1681g of this title) during normal business hours and on reasonable notice.

(b) The disclosures required under section 609 (section 1681g of this title) shall be made to the consumer--

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone is prepaid by or charged directly to the consumer.

15 U.S.C. section 1681n provides that one may recover actual and punitive damages

for willful noncompliance. 15 U.S.C. section 1681o states that actual damages may be recovered in cases of negligent noncompliance.

Equifax urges that it complied with the disclosure requirements of the statute, the only issue under the Act submitted to the jury. Our careful review of the record leads us to the same conclusion. All of the reports were disclosed to Lamb. He was even given copies of two of them. Lamb would argue that he was entitled to copies of all the reports. 15 U.S.C. section 1681g does not require the reporting agency to present copies of any reports, but merely to disclose the nature and substance of the information. The record demonstrates no reluctance on the part of Equifax to disclose the nature and substance of the information. The record demonstrates

no reluctance on the part of Equifax to disclose to Lamb. Indeed, the discovery taken during the suit revealed no additional information which had not already been disclosed in a timely fashion prior to the action being brought.

This present case is distinguishable from Millstone v. O'Hanlon Reports, Inc., 528 F. 2d 829 (Eighth Cir. 1976) in which the Court held the agency violated the disclosure requirements by telling the consumer that the file was not available when, in fact, it was. In Millstone, it was also found that O'Hanlon had only partially disclosed the information in its files. There is no such evidence in the present case. The Louisville office disclosed the contents of the reports, when it received them, without any apparent

reluctance or withholding of information.

Lamb insisted that he was never given a copy of the report which was read to Mrs. Lamb by someone in the Cincinnati office. The only testimony that the report referring to drinking ever existed was Mrs. Lamb's. The Farm Bureau representative's testimony was to the effect that the Farm Bureau received four reports, none of which referred to Lamb's having drunk to excess. Those four reports were also identified and testified to by the parties. Assuming there were another report, there was still no violation of 15 U.S.C. section 1681g because the report was disclosed over the telephone.

Lamb would argue, in any event, that Equifax failed to disclose the name of Marketing Insurance, the other recipient of the report. Equifax personnel testified that the Lambs never requested such information.

It is not clear whether 15 U.S.C. section 1681g requires the consumer to request each item of information specifically. We have searched the case law and have found no interpretation of that particular provision. The statute says that upon written request the agency must furnish the required items. The word request is in the singular. Since this is a statute designed to protect the consumer, we believe that any request for information by a consumer concerning his file should require the agency to report each of the three items listed. Such an interpretation would seem to be consistant with 15 U.S.C. section 1681h, concerning conditions of disclosure, which speaks of required disclosures,

plural, and not a required disclosure.

Assuming that Equifax were also required to disclose the other recipient of the report, we will examine the issue further. The Equifax employees stated they did not specifically tell Lamb of the other recipient. The name, however, was disclosed on the July 7th report, a copy of which was given to Lamb. The evidence certainly does not demonstrate a willful failure to disclose, but at most a negligent one. Therefore, Lamb would have been entitled to actual damages sustained by reason of the failure pursuant to 15 U.S.C. section 1681o. However, assuming that such disclosure were actually required, there could be no recovery because there was no proof of damages resulting from the failure to disclose the name of the second recipient.

We are aware that Ackerley v. Credit Bureau of Sheridan, Inc., 385 F. Supp. 658 (D.C. Wyo., 1974) found that under 15 U.S.C. section 1681n, liability for willful violations, actual damage is not required to enforce liability under the Act. Ackerly goes on to state, however, that there is no strict liability under the Act, the Plaintiff bearing the burden of proving willfulness. In the present case, there was no proof of willful failure to disclose the name of the second recipient. In the absence of willfulness, Lamb could only recover actual damages under 15 U.S.C. section 1681o for negligent noncompliance, damages which he did not prove.

Even under the most favorable interpretation of the Act, Lamb failed to come forward with sufficient

evidence to create a jury question on failure to disclose. The trial court erred in failing to grant the judgment notwithstanding verdict. See Hoskins v. Hoskins, Ky. 316 S.W. 2d 368 (1958).

In passing, we would note that the procedural history of this case is rather bizzare. The trial court's course of action, while questionable, has some support. Since a court may after a second trial, on a motion for judgment notwithstanding verdict, enter a judgment on the verdict it erroneously set aside, it is conceivable that the court could determine that its granting of a new trial was in error and reinstate the original verdict and enter judgment thereon. See Chesapeake & Ohio Railway Company v. Salvers, 187 Ky. 144, 218 S.W. 474 (1919). In any event, the court's action did not work to prejudice

any of the parties. For that reason, we hold that the procedural course pursued by the trial court was not erroneous.

We have not ignored the challenges which Equifax has raised in its reply brief to Lamb's brief on appeal. The inclusion by Lamb of material ruled inadmissable by the trial court is inexcusable. The other claims made by Equifax are also metitorious. We would admonish counsel for Lamb to the proper course of presentation of his case.

The judgment is reversed with directions that a new judgment be entered in conformity with this opinion.

LESTER, JUDGE, concurs.

WINTERSHEIMER, JUDGE, concurs by separate opinion.

WINTERSHEIMER, JUDGE, concurring. In general, the Fair Credit Reporting Act enacted by Congress has failed in some

significant areas to adquately protect the credit applicant. Any procedures by a credit company which produce inaccurate reports based on obsolete or false information have an adverse effect on consumers. The system of not furnishing written reports upon request to an applicant until a release is executed is highly questionable.

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COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

NO. 80-CA-2105-MR

EQUIFAX SERVICES, INC. APPELLANT

VS. APPEAL FROM
WARREN CIRCUIT COURT
NO. 20874

WILLIAM LAMB APPELLEE

ORDER DENYING
PETITION FOR REHEARING

BEFORE: HAYES, CHIEF JUDGE, LESTER and WINTERSHEIMER, Judges.

The court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

CHARLES B. LESTER
JUDGE, COURT OF APPEALS

ENTERED: June 12, 1981

SUPREME COURT OF KENTUCKY

81-SC-442-D
(80-CA-2105-MR)

WILLIAM LAMB — MOVANT

VS. WARREN CIRCUIT COURT
*20874

EQUIFAX SERVICES, INC. — RESPONDENT

ORDER DENYING MOTION
FOR DISCRETIONARY REVIEW

The motion of William Lamb for a review of the decision of the Court of Appeals is denied.

ENTERED October 6, 1981.

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CHIEF JUSTICE

SECTION 1681. Findings and purpose

(b) It is the purpose of this title (15 USCS section 1681 et seq.) to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title (15 USCS section 1681 et seq.)

SECTION 1681c. Obsolete information

(a) Except as authorized under subsection (b), no consumer reporting agency containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) are not applicable in the case of any consumer report to be used in connection with-

(1) a credit transaction involving, or which may reasonably be expected to involve a principal amount of $50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

(3) the employment of any individual at an annual salary which equals or which may reasonable be expected to equal $20,000 or more.

SECTION 1681g. Disclosures to consumers.

(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed; Provided, That in the event an action is brought under this title (15 USCS section 1681 et seq.) such sources shall be available to to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished--

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.